

REPORTABLE
*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA NOS.702-03 OF 2003 & CM NOS.1699/2003 &827/2007

% Date of Decision : 12th October, 2007.

DELHI DEVELOPMENT AUTHORITY Appellant.
Through Mr. Jagmohan Sabharwal, Sr. Advocate
with Mr.Arun Birbal, Advocate.

VERSUS

R.S. JINDAL & ANR. Respondents.
Through Mr. Jayant Bhushan, Sr. Advocate with
Mr. Lalit Bhardwaj, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J. :

C.M. NO. 1699/2003 :

1. This is an application for condonation of delay of 216 days in filing of this intra court appeal against the judgment dated 17th

December, 2002 passed by the learned Single Judge in the Writ Petition (Civil) No. 2300/1997. This application was allowed vide Order dated 9th November, 2005. The Supreme Court allowed the appeal filed by the respondent-Mr. R.S. Jindal by its order dated 3rd November, 2003 with the direction that this application would be heard afresh along with the present Letters Patent Appeal filed by the appellant-Delhi Development Authority (hereinafter referred to as DDA, for short).

2. The Respondent has relied upon several judgments. We do not propose to separately refer to these judgments as the principles of Law are well settled. Delay in filing of an appeal has to be satisfactorily or reasonably explained. However, it is not each days delay that is to be put under scanner nor is it a fault finding exercise by the Courts. Unless it is a case of gross negligence, Courts are liberal in condoning delays where proper explanation and cause for the delay has been set out. Courts dispense justice and therefore unless there are reasons to hold that the delay was deliberately occasioned for gaining an advantage and benefit, a meritorious

matter should not be dismissed on the ground of limitation. At the same-time we are gradually but certainly moving in the direction of stricter compliance with provisions prescribing time limits and limitation. Normally, no distinction is made between an application for condonation of delay filed by a private party and the Government or public authorities. Government and public authorities should comply with the limitations periods prescribed by law just as it's subjects, if not lead by setting an example. However, Courts are conscious that exerting standard should not be applied in all circumstances and care has to taken about disabilities and the ground reality. The Supreme Court in the case of ***State of Haryana versus Chandramani and others*** reported in (1996) 3 SCC 132 has accepted the fact that on account of impersonal machinery, file pushing and inherent bureaucratic methodology imbued in Government and public authorities, decision making process is slow and considerable time is taken, thereby causing delay, sometimes intentionally and sometimes otherwise. In these circumstances the Supreme Court has held that the expression "*sufficient cause*" should be viewed from a pragmatic

and justice oriented approach. Similar observations have been made in the ***State of Nagaland Versus Lipok Ao*** reported in (2005) 3 SCC 752 and it has been opined that the term “sufficient cause”, should, therefore, be considered with pragmatism in a justice oriented approach rather than technical detection of sufficient cause for every day's delay.

3. DDA has explained the delay, inter alia, stating that after the judgment dated 17th December, 2002 was passed, the same was made subject matter of rectification/modification of certain typographical errors on an application filed by the respondent. The application was disposed of on 28th February, 2003 with certain corrections in the judgment dated 17th December, 2002. It is further explained that due to mistake/error in the office of counsel of the DDA, certified copy of the Order dated 28th February, 2003 was not applied for. When the default came to notice of the counsel for DDA after verification of records, on 30th May, 2003 certified copy of the Order dated 28th February, 2003 was applied for and received on 9th June, 2003. The certified copy was sent to the office of DDA by the

counsel along with his written opinion/notes on 9th July, 2003. It is further stated in the application that the matter had to be examined by Chief Vigilance Officer in DDA whose views/notes were received on 11th August, 2003 and thereafter it was decided that an intra court appeal should be filed. By order dated 14th August, 2003, the file was entrusted to the counsel for drafting of an appeal. Correspondence were exchanged between the counsel and DDA and upon receiving the relevant papers, the counsel drafted the grounds of appeal and the appeal was filed on 1st September, 2003. It may be stated here that DDA has also filed an affidavit of the counsel who was handling the matter before the learned Single Judge. Counsel has admitted that the contents of the application for condonation of delay are correct. Thus admitting default of his office in applying for the certified copy.

4. DDA is a statutory authority and has to naturally rely upon their counsels who conduct cases for supply of certified copies and legal opinion before deciding whether or not to file an appeal. In the present case, as stated above the counsel for DDA has admitted that

there was default and mistake by his office in sending the certified copy of the Order dated 28th February, 2003 to DDA. The counsel has also filed his affidavit admitting mistake of his office. We do not think that DDA should be made to suffer because of this mistake made by its counsel. Parties do rely upon their counsel for certified copies. In these circumstances, we feel that DDA should not be penalised and punished for the default made by the office of their counsel. In our system where Government and private citizens rely heavily upon counsel, mistakes made by office of the counsel can result in delay. We are satisfied that in the present case DDA cannot be blamed for the delay till certified copy of the Order dated 28th February, 2003 was served and received in its office in July, 2003. DDA has been able to show sufficient cause for this period.

5. Even thereafter delay stands explained as the file had to be examined by the Chief Vigilance Officer, DDA and steps had to be taken to file an appeal by drafting grounds and also preparing paper book. In these circumstances, we allow the application and condone the delay in filing the Appeal.

Application stands disposed of.

LPA Nos. 702-03/2003

1. In terms of the order dated 3rd November, 2003 passed by the Supreme Court and with the consent of the parties we had heard the learned counsel for the parties on merits. It was made clear that in case we allow the application for condonation of delay, we shall also deliver and pronounce judgment on the present Appeals on merits.

Background facts

2. The Respondent- Mr. R.S. Jindal was an employee of the appellant- DDA. On 23rd December, 1985, the appellant passed an order for compulsorily retirement of the respondent. WP(C) NO. 168/1986, filed by the respondent challenging the order of compulsory retirement was allowed by a Division Bench of this Court vide Judgment dated 15th December, 1986, inter alia, holding that there was no justification as the service record of the respondent did not contain any entry to prove that he was a person of doubtful integrity. Direction was given that the respondent would be treated in

service with continuity of service and consequential benefits.

3. DDA filed a Special Leave Petition before the Supreme Court, which was admitted. On the interim application, the Supreme Court in its Order dated 25th March, 1987, directed as under:-

“There will be a stay on the condition that the respondent is paid full salary and allowances pending disposal of appeal.”

4. The effect of the aforesaid direction was that the operation of the judgment dated 15th December, 1986 quashing the Order of compulsory retirement dated 23rd December, 1985 was stayed but the respondent was to be paid full salary and allowances as if he was in service during the pendency of the appeal before the Supreme Court.

5. On the representations of the respondent and without prejudice to the rights and contentions of the appellant-DDA in the appeal pending before the Supreme Court by order dated 21st June, 1989, the respondent was posted and worked with DDA till he superannuated on 31st December, 1993. It is an admitted case that the respondent has been paid full salary and allowances for the

period after 23rd December, 1985 till he superannuated on 31st December, 1993.

6. The appeal was disposed of by the Supreme Court by Order dated 8th September, 1994. The Order dated 8th September, 1994 passed by the Supreme Court in Civil Appeal No. 793/1987 is the crux and the corner stone of the dispute between the parties. For the sake of convenience the Order is reproduced below:-

“After addressing the arguments for considerable time, Shri Salve, the learned senior counsel for the respondent seeks permission of the Court to withdraw the civil Writ Petition No. 168/86 in the light of the decision laid by this Court in Balkunthunath Das & Anr. Vs. Chief District Medical Officer, Baripada & Anr. (1992 (2) SCC 299) with liberty to approach the DDA to pass an appropriate order on his entitlement to the pension and requests to protect the salary he had received during the period he worked after reinstatement pursuant to the Judgment of the Delhi High Court till he retired on attaining the age of superannuation. We find that the permission sought for and request made are reasonable. Accordingly, the judgment of the High Court of Delhi, dated December 15, 1986 is set aside. The respondent is permitted to withdraw the writ petition and it is accordingly dismissed as withdrawn. Since, the

respondent was reinstated pursuant to the order of the Division Bench and he continued in service till he attained the age of superannuation by performing the duties of his office during that period, we direct that the salary paid to him during that period shall not be recovered. However, while it would be open to the respondent to make an application to the authorities for fixing his pension, it would be open to the authorities to fix such pension according to rules.

The appeal is disposed of accordingly. No costs.”

7. After disposal of the Appeal by the Supreme Court, DDA passed an Order dated 29th August, 1995 fixing provisional pension on the basis of service rendered by the respondent in DDA. A dispute about the pension component payable by the MCD was raised but stands settled and the same is not a subject matter before us.

8. By another letter dated 15th December, 1995, DDA informed the respondent that the Chairman/Lt. Governor of Delhi had been pleased to order that the service rendered by the respondent, w.e.f. 23rd December, 1985 to 31st December, 1993 would be treated

and regularised as re-employment period. But the re-employment period would not be counted for computing pension or other retirement benefits. The establishment order dated 15th December, 1995 reads as under:-

**“ESTABLISHMENT ORDER NO.4102
DATED 15.12.1995**

The Chairman, Delhi Development Authority/Lt. Governor of Delhi has been pleased to order that service rendered by Shri Ranjit Singh Jindal, Chief Engineer (Civil) retired w.e.f. 23.12.85 to 31.12.93 be treated and regularized as a re-employment period. The period of re-employment will not be counted for computing pension or any other retirement benefits.

(V.K. JAIN)
O.S.D. (PERSONNEL)

No.F.9(30)75/PB-I dated 15.12.85 (sic)”

9. Relying upon this re-employment order, disciplinary proceedings were initiated against the respondent on the basis of Rule 9 of the CCS (Pension) Rules which, inter alia, provides that departmental proceedings can be initiated within four years of retirement or re-employment.

Legal Proceedings

10. The respondent filed a contempt application being Civil Contempt Application No. 574/1996 before the Supreme Court but the same was dismissed in limine. In the said Contempt Application the respondent challenged Order dated 15th December, 1995.

11. The Establishment order dated 15th December, 1995 and the resultant departmental proceedings were challenged in the WP(C) No.2300/1997. The respondent also made a prayer that the entire period of his service upto the actual date of retirement i.e. upto 31st December, 1993 should be counted for the purpose of computing and paying his pension or in the alternative the respondent should be treated as retired w.e.f. 23rd December, 1985 and he should be paid pension from the said date along with interest. It was submitted that the respondent was entitled to computation of pension w.e.f. 23rd December, 1985 and the said computed pension should be paid along with interest w.e.f. the said date.

12. DDA defended its action in passing the Order dated 15th December, 1995 for re-employment and its decision to initiate

departmental proceedings in terms of Rule 9 of CCS (Pension) Rules. During the pendency of the said writ petition, vide order dated 16th December, 1997, DDA paid amount of Rs.4,03,699/- to the respondent on account of arrears of pension, w.e.f. 23rd December, 1985 to 30th November, 1997.

Directions in the Impugned Judgement dated 17th December, 2002

13. Accepting the contentions of the respondent, Ld. Single Judge has quashed Establishment Order dated 15th December, 1995 by the impugned judgment and has directed that Rs.2,35,234/- with 9% interest towards retirement benefits should be paid to respondent for the period 23rd December, 1985 till superannuation of the appellant on 31st December, 1993. The above figure comprises of Dearness Relief on Pension of Rs.57,410/-, Retirement Gratuity of Rs. 47,375/-, Computation of Pension of Rs.1,00,129/- and leave encashment of Rs.30,320/-.

Contentions of Parties.

14. Learned counsel for the appellant-DDA had submitted that he has instructions not to question and challenge the impugned

judgment of the learned Single Judge to the extent charge-sheet issued against the respondent and Establishment order dated 15th December, 1995 stands quashed. We need not therefore examine this aspect. The only question and ground raised before us is with regard to the other direction passed by the learned Single Judge directing payment of the above retirement benefits along with interest @ 9% per annum.

15. Ld. Counsel for the appellant had submitted that the respondent has been paid salary for the period 23rd December, 1985 till 31st December, 1993 and he cannot be paid pension for the same period. He had urged that directions given would amount to dual payment of both full pension and salary for the period mentioned above. Since salary stands paid, the direction to make the aforesaid payments cannot be sustained.

16. Ld. Counsel for the respondent had drawn our attention to the order dated 8th September, 1994 passed by the Supreme Court and submitted that as the order of compulsory retirement has been upheld, therefore, the entire period between 1985 to 1993 should be

treated as a period when the respondent was working on commercial employment with the appellant and accordingly both pension and salary for this period was payable. He drew our attention to several Rules and urged that both pension and salary should be paid. He also stated that the appellant had themselves paid Rs.4,03,699/- towards salary for the period in question and pension of the same period, except for the amounts directed to be paid by the learned single judge.

Findings and Decision

17. A plain reading of the Order dated 8th September, 1994 passed by the Supreme Court reveals that the respondent had agreed to withdraw Writ Petition (Civil) No. 168/1986 challenging his order of compulsory retirement dated 23rd December, 1985 and the judgment of the High Court dated 15th December, 1986 in favour of the respondent was quashed and set aside. In terms thereof the respondent is entitled to be paid pension and other retirement benefits and not salary after 23rd December, 1985.

18. After the judgment dated 15th December, 1986, the Order compulsorily retiring the respondent stood quashed, he was deemed to be in service as if he had never retired on 23rd December, 1985. The Supreme Court by an interim order dated 25th March, 1987 granted stay but subject to the condition that full salary and allowances would be paid to the respondent during the pendency of the appeal. The result was that instead of pensionary and retirement benefits pursuant to order of compulsory retirement, the respondent continued to get full pay and allowances.

19. Under normal circumstances, the respondent was required to refund the entire salary and allowances paid to him after 23rd December, 1985 till 31st December, 1993 in terms of the judgment of this Court dated 15th December, 1986, which stood reversed and was set aside. Under the Doctrine of Restitution, the entire amount paid had to be refunded and paid back. The doctrine of restitution is recognised under Section 144 of the Code of Civil Procedure, 1908, but the said Section is not fountain head or source of restitution, rather it is a statutory recognition of the pre-existing rule of justice,

equity and fair play. Courts have inherent right of restitution to do complete justice between the parties and place them in the same position which they would have occupied but for any order or judgment or part thereof which is modified or reversed. Further, when an interim order gets merged into a final order, any benefit taken under the interim order on reversal or modification by the final order, can be directed to be refunded. Benefit taken under a wrong order cannot be perpetuated by keeping it alive and respecting it. Injustice done is undone and unfair gain made by a party causing loss to the other side is set right. (See, observations of the Supreme Court in ***South-eastern Coalfields Ltd versus State of M.P. and others*** reported in (2003) 8 SCC 648 and ***Gurdit Singh versus Nirmal Singh*** reported in (2000) 8 SCC 551).

20. The Supreme Court was conscious of the fact that in view of the interim order, the respondent had been paid full salary and allowances pending disposal of the appeal vide order dated 8th September, 1994, i.e. for the entire period between 23rd December, 1985 till his superannuation on 31st December, 1993. The Supreme

Court did not direct refund of this amount by the respondent to the appellant-DDA. The reason was that the respondent, after passing of the judgment dated 15th December, 1986 by this Court and the interim order dated 25th March, 1987 by the Supreme Court, was “*reinstated*” and DDA continued to avail of his services till the superannuation of the respondent. As a result, the respondent was paid full salary and allowances. Therefore the salary paid was protected and no order for restitution was passed.

21. DDA has explained “reinstatement” of the respondent in its additional affidavit dated 30th August, 2004. We have also examined the records and files of DDA in this regard. The respondent had made various representations for being assigned official duties after judgment dated 15th December, 1986 and the interim order dated 25th March, 1987 was passed by the Supreme Court. Opinion of a former Chief Justice of India was enclosed with the requests pleading that the respondent may be posted and allowed work during the pendency of the appeal without prejudice to the rights and contentions of the appellant-DDA before the Supreme Court. The

stand taken by the respondent was that as he was being paid full salary and allowances, it would be in the interest of the public authority that public funds were utilised to the best advantage and therefore services of the respondent should be utilised. It was opined that there was no prohibition in utilising the services of the respondent during the pendency of the appeal inspite of the stay Order granted by the Supreme Court. It was stated that no harm and loss would be caused to the appellant-DDA by taking work from the respondent. In terms of the representations made by the respondent, office order dated 21st June, 1989 assigning work to the respondent was passed with the following condition :-

“The assignment will not prejudice the rights and contentions of the Delhi Development Authority in the appeal pending in the Hon'ble Supreme Court.”

22. We feel that the respondent cannot claim on the basis of the order dated 21st June, 1989 that he was commercially employed by the DDA or is entitled to be paid both salary and pension for the period from 23rd December, 1985 till 31st December, 1993. It would

result in the respondent abrogating his undertaking and statement that no loss or harm would be caused to DDA. The respondent should not be permitted to reprobate contrary to his representations.

All along the respondent had agreed and accepted that his posting and allotment of work by the appellant-DDA would be without prejudice to the rights and contentions of the appellant-DDA. Letter dated 21st June, 1989 specifically states that the work assigned to the respondent was without prejudice to the rights and contentions of the DDA. The appellant acted on the repeated requests of the respondent. The respondent cannot claim that he was re-employed or was commercially employed by the DDA after retirement and therefore entitled to both pension and salary. No such request was made and accepted by the appellant. The respondent is estopped from taking up any such plea to the prejudice of DDA and thereby cause loss to the DDA. In case of re-employment or commercial employment, considered decision on proper appreciation in that regard had to be taken by DDA and an order had to be passed. There is nothing on record to suggest that a conscious decision to re-

employ or commercially employ the respondent as a retired employee was ever contemplated or taken. DDA, on the other hand, has taken up the garden path that since it was paying full salary and allowances, therefore it would be appropriate that work was assigned and taken from the respondent as otherwise loss was being caused to the public exchequer and public funds. DDA gave in to the request of the respondent on the specific undertaking and the statements made. The respondent now cannot turn around and claim that he was re-employed or commercially employed by DDA, when he had not made any such request, no such request was considered and no re-employment or commercial employment order was passed.

23. Estoppel is normally a rule of evidence but can have the effect of creating substantive rights as against the person who is estopped. It can be used as a rule of creating or defeating rights and read as part of the substantive Rule of Law. Estoppel is also effectively used to prevent circuitry of action and fraud. We can appropriately refer here to the decision of the Supreme Court in **B.L.**

Sreedhar and others versus K.M. Munireddy (dead) & others

reported in (2003) 2 SCC 355 wherein it has been held that estoppel is a part of substantive law and a rule of equity. Principle of acquiescence and waiver which are sub-headings of estoppel were also examined in detail and it was observed:-

“If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.”

24. Similar view has also been taken in the case of ***Bank of India and others versus O.P. Swarnakar and others*** reported in (2003) 2 SCC 722 holding that a person cannot approbate and reprobate at the same time and once a person has made a choice between two courses of conduct available to him he cannot resile. The subsequent conduct cannot be inconsistent with the earlier conduct. Once a person has accepted benefits from a transaction/contract/instrument, etc. which he could have avoided or

contested, he is estopped from questioning, challenging and denying validity and binding effect of the said contract/act. A person cannot be permitted to resile from what he has stated and on the basis of which the other side had acted.

25. The respondent himself requested that he should be assigned some work without prejudice to the rights and contentions of the appellant-DDA in the appeal before the Supreme Court. The respondent, therefore, was not entitled to be paid full salary and allowances for this period. However, the Supreme Court conscious of the fact that the respondent had worked till he attained the age of superannuation directed that the salary paid to the respondent shall not be recovered. This Order was probably passed by the Supreme Court under Article 142 of the Constitution of India as any direction for refund of full salary and allowances would have caused difficulty and hardship to the respondent.

26. The Supreme Court in its Order dated 8th September, 1994 did not pass an order of restitution and did not direct that any amount should be refunded/restituted. However, this cannot imply and mean

that the respondent is to be paid both salary and allowances for this period as well as pensionary benefits. The directions of the Supreme Court were clear that for this period, i.e. after 23rd December, 1985 till 31st December, 1993, the respondent can retain pay and allowances paid to him, though otherwise for this period he was entitled to only pensionary benefits. This certainly does not mean that the respondent should be paid both salary and allowances as well as pensionary benefits or dual benefit, inspite of having lost the writ. The respondent cannot take advantage of his own request to withdraw the Writ Petition (Civil) No. 168/86 pursuant to which judgment dated 15th December, 1986 was set aside and the order of compulsory retirement was upheld.

27. The maxim, ***actus curiae neminem gravabit*** (act of the court cannot cause any prejudice and loss to the party) is also applicable to the facts of the present case. The said doctrine is applicable not only to acts of the courts which are erroneous but also applicable to all such acts of the court which the court would not have directed after it had been apprised of the correct facts and the

law. The respondent was paid full salary and allowances as per judgment dated 15th December, 1986 and the interim order dated 25th March, 1987. Later on as recorded in the Order dated 8th September, 1994 the respondent withdrew Writ Petition No.168/1986 and accepted the compulsory retirement order dated 23rd December, 1985. DDA cannot be prejudiced by the judgment dated 15th December, 1986 and the interim order dated 25th March, 1987.

28. Ld. Counsel for the respondent referred to Pension Rules and CCS (Computation of Pension) Rules, 1981. We do not think any of the said Rules and the provisions relating to re-employment of pensioners or commercial employment are applicable in the facts and circumstances of the present case. In our opinion, the order dated 21st June, 1989 posting the respondent cannot be regarded as an order of re-employment or commercial employment of the respondent after his retirement. Therefore, the relevant provisions of the Pension Rules and CCS (Computation of Pension) Rules, 1981 relied upon by the respondent do not apply to the facts of the present case and neither can the present case be regarded as commercial employment

of the respondent by the appellant-DDA after his retirement.

29. We may, however, note one disturbing feature. DDA has infact paid Rs.4,03,699/- to the respondent towards arrears of pension for the period after 23rd December, 1985 to 30th November, 1997. This payment was made in spite of the fact that the respondent had already been paid salary for this period. We fail to understand how and why this payment was made. Even if the respondent was treated as re-employed vide order dated 15th December, 1995, fixation of salary ought to be done in terms of Rule 4 of the Central Civil Services (Fixation of Pay and Re-employed Pensioners) Order, 1995. The relevant portions of the said Rule are quoted below :-

“4. Fixation of pay of re-employed pensioners.-

(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b) (i) In all cases where the pension is fully ignored, the initial pay on re-employment

shall be fixed at the minimum of the scale of pay of the re-employed post.

(ii) In cases where the entire pension is *not* ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the re-employed post. Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

(emphasis supplied)

NOTE .- In fixing the initial pay of re-employed pensioners, the pension equivalent of gratuity may not be deducted from the pay so fixed.

(c) The re-employed pensioner will in addition to pay as fixed under para.(b) above, shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before

attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:-

(i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts **below** Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) in the case of service officers belonging to the Defence Forces and civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs.500 of the pension and pension equivalent of retirement benefits shall be ignored.”

30. Rule 4(a) states that no protection of scale of pay prior to retirement shall be available to a re-employed pensioner. Rule 4(d) stipulates that in case of persons retiring before attaining the age of 55 years, as in the present case, on re-employment, pension to the extent stipulated therein will be ignored for initial pay fixation. Under Sub-Clause (ii) to Rule 4(d), which is applicable to Civil servants holding Group A posts, first Rs.500/- of pension and pension

equivalent to retirement benefits is to be ignored but rest of the pension has to be taken into consideration and deducted while fixing pay on re-employment. In such cases, where entire pension is not ignored, under Rule 4(b)(ii) the pay scale on re-employment of the respondent was required to be fixed at the same stage as the last drawn pay before retirement but non ignorable part of pension had to be reduced from the pay so fixed. The said clause is applicable. Therefore, the entire pension or pensionary benefits could not have been ignored in the case of respondent in terms of Rules 4(d)(ii) and Rule 4(b)(ii), which mandate that in all such cases like that of the respondent, the non-ignorable part of pension i.e. except for Rs.500/-, shall be reduced from the pay so fixed. Thus the pay fixed on re-employment is to be reduced by the non-ignorable part of the pension. The respondent, therefore, would not have got pension and salary at the same time for this period, except the first Rs.500/- of the pension and the pensionary benefits. It is unfortunate that DDA ignored the aforesaid Rules while making the payment of Rs.4,03,699/.

31. It is clear to us that in case services of the respondent during the period 23rd December, 1985 till 31st December, 1993 are treated as re-employment period, the respondent would be entitled to receive salary for this period minus the pension payable to him, with first Rs.500/- of the pension/retirement benefits not being reduced from the computation and accordingly, under the Rules, the respondent will not be entitled to dearness relief on pension, retirement gratuity, leave encashment and computation of pension for this period. This is also clear from the Rules i.e. Pension Rule 50 and 55A(i), CCS Commutation of Pension Rules and CCS Leave Rules.

32. Learned Single Judge by the impugned judgment relying upon the Order passed by the Supreme Court has quashed and set aside the letter/establishment order dated 15th December, 1995 treating the period between 23rd December, 1985 till 31st December, 1993 as re-employment period. The said period, therefore, cannot be treated as re-employment period and accordingly the said Rules cannot be made applicable. Once order dated 15th December, 1995

is quashed as was prayed for and decided by the Ld. Single judge, the respondent cannot claim that he was re-employed by the DDA.

33. The case of the respondent, on the other hand, is that the appellant-DDA did not re-employ him and he was taken on commercial employment by the DDA as a Consultant on contract basis. It is stated that this period from 23rd December, 1985 to 31st December, 1993 should be treated as commercial employment on contract basis between the respondent and the DDA. In this regard, the appellant has relied upon Rule 10 of the CCS (Pension) Rules which deals with commercial employment. Under Sub-rule 8, the term “commercial employment” has been defined as under:-

(8) In this rule, -

(a) the expression “*commercial employment*” means-

(i) an employment in any capacity including that of an agent, under a company, co-operative society, firm or individual engaged in trading, commercial, industrial, financial or professional business and includes also a directorship of such company and partnership of such firm, but does not include employment

under a body corporate, wholly or substantially owned or controlled by the Central Government or a State Government.”

34. A cursory glance in the said Rule would indicate that the term “commercial employment” means employment in a private sector company, cooperative society, firm or an individual, or self-employment in some cases but does not include employment under a corporate body wholly owned or substantially owned or controlled by the Central Government or the State Government. DDA is wholly controlled by the Central Government. The respondent cannot claim that he was in commercial employment on contract basis with the appellant. Rule 10 of the CCS (Pension) Rules was incorporated to prevent pensioners from taking up jobs within two years from the date of their retirement in private sector. The said Rules and the provisions have no application whatsoever to the present case.

35. In view of the above, we allow the present Appeal and set aside the judgment dated 17th December, 2002. It is held that for the period 23rd December, 1985 till 31st December, 1993, the respondent will not be entitled to any pension/retirement benefits as during this

period he has been paid full pay and allowances. For the period w.e.f. 1st January, 1994, the respondent will be entitled to pension and retirement benefits. It is apparent that DDA has already paid the said amount in terms of the order dated 8th September, 1994 passed by the Supreme Court and as per time fixed in the Order dated 4th August, 1995. The Appeal is accordingly allowed but in the facts and circumstances of the case there will be no order as to costs.

36. All pending applications are also disposed of.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

OCTOBER 12, 2007.

P

